IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 192 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MADHUBEN NANABHAI PATEL

Versus

BANK OF INDIA

Appearance:

MR PK JANI for Petitioner

MR PRASHANT G DESAI for Respondent No. 2, 4, 5

MR AJ PATEL for Respondent No. 3

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 15/03/2000

ORAL JUDGEMENT

This is an application in revision filed under Section 115 of the Code of Civil Procedure, 1908 challenging the order dated 15.2.2000 recorded by the learned 2nd Joint Civil Judge (SD), Surat in Restoration

Application No.3 of 1998 in Special Civil Suit No.197/94.

2. The present appalicant was the plaintiff before the learned Civil Judge (SD) in Special Civil Suit No.197/94. The present opponents were the defendants in the said suit. The applicant had contended in the said suit that some of the respondents had executed an agreement to sale in favour of the applicant on 11.1.1986 and thereafter there was another tri-party contract on 2.11.1987. Thereafter, as the respondent did not act upon the said agreement, the applicant filed the aforesaid Special Civil Suit for specific performance of the said contract between the parties. The said suit was registered and ultimately the matter was brought to an end. Then the applicant and the opponents submitted an application that there was a compromise between the parties and in accordance with the contents of the said consent terms, the compromise may be recorded and the suit be disposed of. The said consent terms were produced before the Court on 26.3.1997 by the parties concerned in presence of their Advocates and the trial court recorded its order recording the said consent terms and disposed of the said suit in terms of the consent terms. The court fee certificate was ordered to be issued in favour of the applicant or her Advocate. The suit was accordingly disposed of on 26.3.1997. The said order was followed by a decree in terms of the said agreement. Thereafter the present applicant felt that there was presure and coercion on the applicant for arriving at the said consent terms and, therefore, she moved Restoration Application No.3/98 berore the trial court making various allegations against some of the opponents and on the strength of the said allegations, the applicant submitted that the aforesaid consent term was brought by pressure and coercion and, therefore, it was not a valid contract. The applicant, therefore, prayed that in view of the above position, the said consent decree be recalled and set aside and the parties may be directed to go for trial according to law with respect to the said suit.

3. The said application was resisted on behalf of the concerned opponents and after hearing the parties and after permitting them to produce evidence and after hearing the arguments advanced on behalf of the parties concerned, the learned trial Judge came to the decision that the applicant had failed to prove that there was threat or coercion while bringing the aforesaid compromise and, therefore, the learned trial Judge dismissed the said application of the present applicant on 15.2.2000.

4. Feeling aggrieved by the order and judgment of the trial court, the applicant has preferred this Revision before this Court. It has mainly been contended here that the learned trial Judge has committed serious error and illegality in dismissing the said application. It has also been alleged that the learned Trial Judge has failed to properly appreciate the rival contention and evidence on record. It is also contended that the trial Judge ought to have held that there was coercion on the part of the concerned opponents and that the compromise was brought about on account of the said threat and coercion. Therefore, the case of the applicant is that the learned trial Judge ought to have allowed the application of the present applicant and set aside the said consent decree recorded by the trial court and the trial court ought to have proceeded further with the trial of the suit according to law.

5. M/s. A J Patel and P G Desai, have appeared on caveat and, therefore, both of them were present when the matter was taken up. I have heard M/s. P K Jani, A J Patel and P G Desai, learned Advocates for the parties.

So far the facts are concerned, they are not much disputed that there was Special Suit being Special Civil Suit No.197/94 for specific performance of agreement to sale and purchase. It is also admitted position that the suit was contested and the aforesaid consent terms were produced before the Court. It is also an admitted position that the Court recorded the said application and passed order accepting the said application and directing to draw decree in terms of the said consent terms. Admittedly, the decree in terms of the said consent application was drawn by the court.

6. It is also an admitted position that the aforesaid decree was challenged by the aforesaid Restoration Application No.3/98 and after recording the evidence produced before the Court, the trial court found the matter against the applicant and consequently dismissed the said application. These are undisputed facts.

7. Mr P K Jani, learned Advocate appearing for the applicant has extensively argued that the facts on record clearly go to show that the applicant was under pressure and coercion and this has led to submission of the compromise application before the court concerned. He has also argued that though evidence has been produced in details, the trial court has not considered the said

evidence in details. It appears that the trial court has not discussed the evidence at length with respect to the issue of coercion and threat but at the same time, the trial court did consider the evidence on record to some extent and on the strength of the said appreciation, the trial court was not satisfied on the issue of coercion and therefore, the application was dismissed. The trial court has considered certain other aspects also. First is that before the compromise application was brought on record, the applicant had submitted one more application stating that if any application or document is produced on record purporting to be under the signature of the applicant, then no order may be passed on that application without hearing the applicant. However, this application was withdrawn subsequenbtly before submission of the aforesaid compromise application by submitting application Exh.136. These aspects have been considered by the trial court for arriving at the aforesaid conclusion. The trial court has also considered the fact that the Restoration Application has been filed about 9 to 10 months after the disposal of the suit and the applicant has not given any satisfactory reason for not filing the Restoration Application soon after the disposal of the suit and the delay has not been explained. This fact has been considered by the trial court while dismissing the said application for restoration filed by the applicant. Another aspect of the case is that some of the opponents were required to file Appeal from Order before this Court and after the disposal of the said Special Civil Suit through the said consent terms, the said respondents had withdrawn the said Appeal from Order pending in this Court and the said matter was represented by the applicant in this Court. Therefore, when the said Appeal from Order was withdrawn on account of the disposal of the main matter, even at that stage no fact of coercion was brought to the notice of the court and the Appeal from Order was allowed to be withdrawn as if it was a routine and normal way of doing. The trial court found that had there been at any point of time any coercion, the applicant's side could have brought this fact to the notice of the Advocate or the Court at that point of time.

8. The trial court has found that since the suit was compromised, the Court has passed order for refund of court fees and accordingly the applicant's Advocate has obtained Court fee refund and the certificate was obtained by the learned Advocate for the applicant pursuant to the order of the Court granting refund certificate. It appears to be the reasoning of the court below that had there been in the mind of the applicant

with respect to the alleged coercion or pressure, then the applicant would not have volunteered to receive the amount of court fee refund. The fact that the applicant voluntarily received the said amount, according to the mind of the trial court, amounted to voluntary action on the part of the applicant in the matter of withdrawal of the suit.

9. Learned Advocate for the applicant has also argued that the Court has not recorded satisfaction as was required to be recorded by passing order under Order 23 Rule 3 of the Code. This is not the contention of the applicant either in the Revision memo or in the Restoration application before the trial court in so many words. The applicant has not contended either in this Court or before the trial court in Restoration application that the trial court had not recorded its satisfaction with respect to the consent terms and agreement between the parties. Any way, the trial court has considered the compromise and the order passed by the trial court clearly shows that there was application of mind while allowing the said compromise application is the part and paracel of the record of the Court. In fact, instead of passing the order in couple of lines that the compromise is read over and explained, it is ordered to be recorded and decree to be passed, the trial court has passed detailed order with respect to the disposal of the said suit on 26.3.1997. In fact presence of each party has been noted, presence of each Advocate is also noted. It is also noted that the compromise application was perused by the parties and that it was explained to them and that both the parties and their Advocates had put their signatures in the said compromise. Therefore, it was ordered to be recorded and the decree was ordered to be drawn in terms of the said compromise. So it cannot be said that the Court had not recorded its satisfaction. It appears that though formal decree was drawn, in fact it appears to be withdrawal of the suit and not an application for consent decree. In fact the parties have already settled the matter out of Court and on account of the settlement out of court, the applicant appears to have withdrawn the suit and also appears to have forgone their rights which might be in her favour on the strength of the agreement in question. Therefore, though decree has been drawn and compromise application has been shown as consent decree, in fact it appears to be an application for withdrawal of the suit. The trial court has recorded its satisfaction that the parties have voluntarily accepted the terms and, therefore, the decree was passed on such satisfaction. Moreover, it is not the case of the applicant that there

was some sort of disputes that at the time of submission of the said application for consent terms, it was pointed out to the Court and yet the Court had passed the order for drawing consent decree.

10. The trial court has appreciated evidence to some extent if not elaborately. But the finding of fact has been recorded by the trial court to the effect that there was no coercion, pressure or threat committed on the applicant by the opponents or any of them. The applicant has produced evidence of applicant and her son-in-law Dilip Sopariwala. On the side of the opponents, they have examined one Subodh Talati and thereafter no party has examined any witness. The trial court has considered the evidence of the aforesaid witnesses. Therefore, it cannot be said that there was no appreciation of evidence and there was non-application od mind on the evidence at all. The trial court has also observed that the present applicant was represented by Sr. Advocate of Surat Mr Kazi and she was also represented by another Advocate Mr K C Shah. Had there been any coercion, threat or pressure on the applicant, the applicant would have conveyed the same to either or both of the Advocates. In that view of the matter, the learned Judge appears to be right in observing that the applicant could have examined these witnesses as they were naturally independent witnesses. If Mr Kazi is a Senior Advocate, his evidence could have carried due weight and, therefore, the trial court appears to be right in observing that the applicant has not produced the important evidence in support of her case. In fact, no reason has been explained as to why these Advocates have not been examined. Even before this Court also it has not been explained as to why these important witnesses could not be examined in support of her case. In the aforesaid view of the matter, since the trial court has recorded finding of fact with respect to absence of coercion, threat or pressure, it would not be open to this Court to reappreciate the evidence on finding of fact in this Revision. It has also been contended that interim injunction was in favour of the applicant. However, the Appeal from Order was filed and because the interim application was in favour of the applicant, it cannot be said that the applicant would not agree to some settlement during the pendency of the suit, though the said injunction was not stayed in the said Appeal from Order. But at the same time, earlier matter was admitted by this Court and ultimately it was withdrawn as stated hereinabove. It has also been contended that the case involves crores of rupees, none would give up his/her right with respect to such an important property. It is the fact that neither in this

Revision memo nor in the Restoration Application the applicant has stated that the consideration which was passed by her in favour of the opponents was not received back by her. On query, the learned Advocate for the respondents have contended that the applicant has been repaid her consideration. On the other hand, Mr P G Desai, learned Advocate has made a statement on behalf of opponents No.2,4 and 5 that in fact the opponents have paid Rupees 80 lacs to the present applicant and that the said fact has been stated in a complaint filed by one of the opponents before the police. At the same time, Mr Jani, Learned Advocate for the applicant has argued that though the fact that the payment was made earlier in time, it was not reproduced or stated at earlier stage. As those documents are not required to be considered and since the FIR appears to be subsequent in time, it is not very much necessary to go into those details for the purpose of decision in this Revision. It is no doubt true that the consent decree is an outcome of contract between the parties and, therefore, the consent decree can also be assailed on the ground of fraud, misrepresentation, misunderstanding, mistake, coercion etc. Here one of the grounds of coercion has been brought in force and the trial court has found that the applicant has failed to prove the same. If we look to the record, it is clear that the applicant and her son-in-law have tendered oral evidence before the trial court in order to prove the coercion etc. No other evidence is brought on record. Naturally, the applicant was interested in alleging the fact of coercion and her son-in-law was also interested in supporting the case of the applicant. Both the applicants would, therefore, be witnesses having interest in the subject matter of the case. Since no other evidence has been produced on record it cannot be said that the trial court has committed any illegality in dismissing the application stating that there was proof of coercion led by the applicant. As said above, this being a revision, appreciation of evidence of fact in detail cannot be gone into.

11. So far as the consent terms are concerned, they are in fact running about 4 pages and as said above, detailed order has been passed by the trial court below the said application. The said application has been produced at page 58 and the order is found at pages 61 and 62. It may be relevant to note that the said consent terms also show some references to a written understanding and one more agreement in page 5 which is followed by declaration on oath. These documents are not on record but it seems that over and above, the consent

terms produced before the Court there were at least three other documents in existence on that date as stated in para 5 of the said consent terms at page 60. The applicant could have produced the same or could have asked the other side to produce the same. It has also been contended by learned Advocates for the contesting opponents that though the applicant had filed the suit and had also filed Restoration Application and the agreement to sale the property was the subject-matter in both the application, there the applicant had not produced the original agreement to sale. However, the matter was required tobe gone into in details at the stage of recording of evidence. Therefore, it may or may not be material, if or not that document was produced in original, but the fact remains that though it was a suit for specific performance and the agreement to sale of the immovable property was involving a huge amount, still the original agreement to sale was not produced.

12. In para 6 of the Restoration Application No.3/98, the applicant has stated in para 6 at page 76 that the aforesaid consent terms were brought under coercion and threat and the applicant did not get anything for relinquishment of right in the said property, and, therefore, the agreement is without consideration. Here also she has not stated that she has not been refunded the amount of consideration which was partly paid by her at the time of the agreement to sale. But it appears that she refers to non-payment of some more money for relinquishment of right in the property. It appears to be something more than the amount of refund of the earnest money or advance payment. However, it is not clear as to whether she referred to any payment of a particular amount. It is not stated as to what amount was required to be paid or agreed to be paid and yet not paid. In this regard, para 6 of the Restoration Application ar page 76 is also silent. Again, so far as coercion, threat etc. are concerned, the details have been given in the Restoration Application and they are also reproduced in oral evidence. Though as said above, the evidence has not been discussed in length or elaborately by the trial cour, in fact it was recorded by the trial court that there was no proof of coercion or threat. Under these circumstances, I am of the view that the applicant has not been able to prove that there was coercion and threat when the compromise application was submitted before the trial court. It is not also established that the trial court has not recorded its satisfaction while passing the order which was followed by decree. It is also not established that the trial court has not properly appreciated evidence and has not

properly considered the contentions of the applicant. In that vaiew of the matter, this revision is without any merit and it deserves to be dismissed.

13. Mr P K Jani, learned Advocate has also argued that the parties should be allowed a fair trial and the opponents are not going to lose anything if consent decree is ordered to be recalled and the parties are ordered to go for trial of the suit de novo. Since the said allegations have not been brought home, there is no question of setting aside the consent terms and in that case, the question of remand will not come into play. Under the circumstance, it is immaterial whether the parties would or would not suffer if the trial is ordered to be conducted. At the same time, when the consent terms have been recorded by the trial court and when it is not proved that they are brought under force, coercion or threat, then the consent terms cannot be set aside. On the other hand, if the coercion is proved, then the consent terms could be set aside and this would be irrespective of the fact as to whether a particular party would suffer here or there. The applicant has not been able to satisfy the trial court and again even before this Court it has not been established that the consent terms were arrived at under coercion and threat. Therefore, there is no question for setting aside the consent decree. Consequently the Revision is required to be dismissed and is accordingly dismissed. However, in the facts and circumstances, there shall be no order as to costs.

14. At this stage, learned Advocate for the applicant prays that this order is required to be carried to the Supreme Court and, therefore, the status-quo which is in existence till today may be continued for a period of four weeks. Mr P G Desai, learned Advocate appearing for the contesting opponents concerned strongly objects to this relief. However, in the facts and circumstances of the case, and considering the fact that status-quo has been maintained till today, it is directed that the same will be maintained upto 10th April, 2000.

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msp.